

OLC's argument boils down to an untenable assertion that because the Senate has chosen not to act on the President's nominations during its sessions, it was incapable of doing so.

Finally, OLC's assertion that pro forma sessions are not cognizable for purposes of the recess appointments clause violates established constitutional practice and tradition. The Constitution provides that "[n]either House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days," and that "unless [Congress] shall by law appoint a different day," Congress shall begin each annual session by meeting "at noon on the 3d day of January."

The Senate has commonly and without objection used pro forma sessions to fulfill both constitutional requirements, evidencing a past consensus that such sessions are of constitutional significance. President Obama's novel assertion that such sessions no longer count for purposes of the recess appointments clause thus upsets precedent and creates an internal contradiction in the treatment of Senate sessions for purposes of the Constitution.

President Obama's January 4, 2012, appointments to the CFPB and the NLRB are unconstitutional. As duly sworn Senators, we each have an institutional and a constitutional duty to preserve and defend the prerogatives of the Senate, particularly from the encroachments of the Executive. The President's unconstitutional appointments simply cannot stand.

Throughout my time as a member of the Judiciary Committee, I have made it a point to work collaboratively with Members from across the aisle, and I have also gone out of my way to cooperate with the current administration to ensure that the overwhelming majority of the President's nominees to judicial and other positions are considered and receive a vote. Both in the Judiciary Committee and on the floor I voted for dozens of nominees with whom I fundamentally disagreed on various issues simply because they were nominated by a President who was duly elected by the people. But I will do so no more.

My concerns, to be clear, are non-partisan, and I will be equally critical of any Republican President who might attempt to make recess appointments under the same deeply flawed legal theory. Given this President's blatant and egregious disregard for proper constitutional procedures and for the Senate's unquestioned role in such appointments, I find myself duty-bound to resist the consideration and approval of additional nominations until the President takes steps to remedy the situation.

Regardless of what precise course I choose to pursue, the President certainly will not continue to enjoy my nearly complete cooperation unless and until he rescinds his unconstitutional recess appointments.

Thank you, Madam Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. I thank the Chair.

(The remarks of Senator SANDERS pertaining to the introduction of S. 2037 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Utah.

HONORING THE MEMORY OF SPECIAL AGENT JARED FRANCOM

Mr. HATCH. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 355, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 355) honoring the memory of Special Agent Jared Francom of the Ogden, Utah Police Department.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HATCH. Madam President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 355) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 355

Whereas, on January 4, 2012, Special Agent Jared Francom of the Ogden, Utah Police Department, serving on the Weber-Morgan Narcotics Strike Force, was fatally wounded in a shooting while serving a search warrant on a residence in Ogden;

Whereas Officers Michael Rounkles, Kasey Burrell, and Shawn Grogan of the Ogden Police Department were also wounded in the shooting;

Whereas Sergeant Nate Hutchinson of the Weber County Sheriff's Office was also wounded in the shooting;

Whereas Officer Jason Vanderwarf of the Roy Police Department was also wounded in the shooting;

Whereas the officers on the Weber-Morgan Narcotics Task Force acted quickly and bravely to subdue the shooting suspect, preventing further injury and loss of life;

Whereas Officer Kasey Burrell remains in the hospital recovering from serious injuries sustained in the shooting;

Whereas Special Agent Francom served with the Ogden Police Department for 8 years;

Whereas Special Agent Francom served the Ogden community with honor and distinction;

Whereas the people of Utah have come together to mourn and honor Special Agent Francom, with an estimated 4,000 people attending the funeral of Special Agent Francom on January 11, 2012, in Ogden; and

Whereas the injury or loss of any police officer is a reminder of the risks taken by all the men and women of law enforcement on behalf of their communities: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes and honors the sacrifice of Special Agent Jared Francom;

(2) extends the deepest condolences of the Senate to the family and friends of Special Agent Francom;

(3) expresses the wishes of the Senate for a full and speedy recovery of all the officers wounded in the shooting in Ogden, Utah; and

(4) recognizes the remarkable courage and honor that the men and women in law enforcement display and the risks those men and women take to keep their communities safe.

Mr. HATCH. Madam President, on January 4, 2012, Special Agent Francom of the Ogden, Utah Police Department, serving on the Weber-Morgan Narcotics Strike Force, was fatally wounded while defending his fellow officers as they attempted to serve a search warrant on an Ogden resident.

I wish to express my deepest sympathies and condolences to Special Agent Francom's family—especially his wife and his two daughters—and the many friends he had throughout the whole community.

Serving as a police officer was a lifelong dream for Special Agent Francom, one that was realized in 2004 when he joined the Ogden City Police Department. He served with honor and distinction and was trusted and beloved by his fellow officers.

He was a fine man, a good father, a good husband and a model citizen and public servant.

On January 11, a crowd of 4,000 people—about half of them uniformed officers from all over Utah and elsewhere—attended his funeral.

Five of Special Agent Francom's fellow officers on the strike force—five of them—including Officers Michael Rounkles, Kasey Burrell, and Shawn Grogan of the Ogden Police Department; Sergeant Nate Hutchinson of the Weber County Sheriff's Office; and Officer Jason Vanderwarf of the Roy Police Department, were also wounded in the shooting.

Officer Burrell remains hospitalized as he recovers from the serious injuries he sustained in the shooting.

Along with everyone in Utah, I am deeply saddened by this turn of events.

At the same time, we are humbled, as this tragedy reminds us all of the bravery and dedication of the women and men of law enforcement who risk their lives every day to keep our communities and their communities safe.

As I have served the people of Utah over the years, I have had a chance to meet and get to know many members of our law enforcement community. Without question, they are among the most honorable and courageous people any of us could ever hope to meet. I am honored every time I have an opportunity just to be in their presence.

Today, I was joined by Senator LEE in submitting this resolution recognizing the sacrifice of Special Agent Francom, extending the Senate's condolences to his family and friends, expressing our good wishes to his fellow officers, and hoping they will all have a full and speedy recovery, and, of

course, recognizing the remarkable courage and honor displayed by the men and women of law enforcement.

I wish to thank my colleagues for their support of this resolution, which I know will mean a lot to Officer Francom's family, his fellow officers, and their community.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WEATHER IN ALASKA

Ms. MURKOWSKI. Madam President, I rise to spend a few minutes on the Senate floor to talk about home—about Alaska. We have a tendency sometimes up north to do things in a big way, a bold way. We tend to brag a little bit about it. That is all OK. But we have been in the center of the news cycle for a few weeks this winter, at the onset of this year, because of our weather which has been big and bold.

As a consequence of some of the extremes that we are seeing up north, I think it has brought out the best of Alaskans and certainly the warmth that comes from a northern climate. I think the occupant of the chair sees that in her State where she has some conditions with snow and cold.

The neighbor-to-neighbor response that comes about when we are dealing with Mother Nature at her finest or at her most extreme, I think, is something that helps define us as a people.

Today, I wish to speak for a few moments to recognize the very extraordinary efforts we have seen recently of the U.S. Coast Guard and the Alaska National Guard in helping the residents of several of our communities since early this year.

Earlier on the Senate floor, my colleague, the junior Senator from Alaska, mentioned some of the events that have happened. He, too, acknowledged the hard work and very significant efforts of our Coast Guard and the Alaska National Guard. I think it is important to make sure we all take the time to tell the story, to share it with colleagues and with people around the country.

In many parts of the United States right now there are some areas that are just begging for snow. I have sons out in Colorado, and they are waiting. I know on the east coast many of us would prefer a little bit more snow. Sometimes it is one of those "be careful what you ask for" situations, or we may be like the town of Valdez and have 27 feet of snow in our community. That is a little bit more than I think most of us would ask for or hope for.

The community of Nome has been in the news for months now as they have felt the brunt of some early winter

storms, storms that have forced them as a community in the northwest region of the State to feel the pinch of Mother Nature in a very extreme way. Nome is a community of about 3,500 residents. It sits up on the west coast of Alaska. Most people in this country recall Nome from the early days of the Gold Rush. But more recently, Nome comes into the national news every March when the famous Iditarod dog sled race is run which finishes in Nome. It is a 1,100-mile race where man and animal are pitched against Mother Nature in a pretty intense way.

Nome makes it in the headlines for several different reasons. This year adds yet another reason that Nome is in the history books, where people are talking about this incredible part of the State. Alaska is known for our tough winters and, again, I started my comments by saying we kind of like the fact that we are tougher than the rest of the world, and we brag about it. This winter, though, has been particularly harsh.

We have seen record cold. We have seen snowstorms hit the State earlier than usual. I was up in the State last week, places such as Bethel where it normally averages about zero this time of year, and we are looking at 20 below for extended periods of time, not just a day or two. In southeastern Alaska not only have they been hit with below zero temperatures, but massive amounts of snow are hitting them as well.

Nome is, again, a coastal community. When they receive their annual fuel supplies, they basically fuel up for the winter. The only way to get to Nome is to fly in or to go by water. So in order to get the fuel tanks filled up for the winter, the annual fuel barges come in early fall before they have ice conditions out in the Bering Sea.

This year, if you will recall, back in October, everybody was watching the news because of the massive storms that were pounding western Alaska. Back in Washington, DC, every evening on the news we could see these major storms coming through. If we were here or down in Florida, they would have called them hurricane force winds. For us, it was a winter storm—a tough one.

What happened with that storm is that it prevented the fuel barge from reaching Nome, so the shipment of fuel that they would receive for the winter is not able to come in.

One might think, well, fuel up the community another way. Again, there are no roads. What is the other way? The other way is aircraft. So one would have to fly in barrels of fuel, driving the cost of fuel up, and, quite honestly, adding to the risk of transport. So it is an issue where fuel delivery by air, while it is possible, is not the preferable way. They are in a situation where they have not only a community of 3,500 but all of the surrounding villages in the region relying on Nome for their backup. So they are at risk too.

Without the fuel tanks being filled, what the community and region were looking at was a situation whereby about March—sometime in March, depending on how harsh the winter was—they were going to run out of fuel.

Well, if the January temperatures are any indication—on average, it is usually about 2 degrees, but it has been 20 below and colder recently. That means people go through fuel pretty darn quick. Then what do they do? They are stuck until spring. You say: Well, isn't April or March spring? Not in Northwest Alaska because fuel barges cannot get to port until all of the ice in the Bering Sea has melted, which doesn't happen until May or June—perhaps earlier if the ice moves.

That is the reality up north. So we have a major community and outlying villages that are looking at a very real threat to their community. Senator BEGICH showed a picture on the Senate floor of gas prices in Alaska. When I was in Nome last week, I saw firsthand the price of regular fuel at the pump was \$5.43. That is what residents of Northwestern Alaska are paying today. Diesel is a hair less than \$6. If they were having to fly in fuel for the balance of the winter, they were looking at about \$9 a gallon. This is on top of all of the other extraordinary costs they pay as a community that is reliant on air for just about everything they need.

Most of you may have seen the story in the news. Lots of people got to work to try to address the situation. I was in contact with the Coast Guard to see what they could do to help. The Coast Guard was amazing in saying: Yes, we are committed to this mission. We are going to help the people of Nome, the people of the region. So what came together was a pretty interesting story.

There is a fuel tanker, the Renda, which is home-ported over in Russia. The Renda filled up with fuel in South Korea and was going to pick up fuel in Japan. They got shut out of Japan by weather. They had to go to Unalaska, Dutch Harbor on the Aleutian Chain, to fill up. For those of us who know of the Jones Act, there is an issue there. They had to get the Departments of Defense, Homeland Security, Transportation, and Energy to act to get a Jones Act waiver so the Russian fuel tanker could fill up in an Unalaska port and haul the fuel north to the people of Nome. It is a pretty interesting saga, just in describing the beginning.

This is more than a 1,000-mile nautical journey, and they were breaking ice for about half of the way. The Renda is a pretty capable ship, but she is not an icebreaker. How she got through that ice is an interesting part of the story. The Coast Guard Cutter Healy, which had been on a research mission since early May and was on her way back to Seattle to deliver the crew got a call that Nome needed help. The fine men and women of the Healy missed their Christmas, their New Year's, and headed back north to clear a path for the Renda to Nome.